

VZCZCXYZ0000  
RR RUEHWEB

DE RUEHGT #0232/01 0352110  
ZNR UUUUU ZZH  
R 042109Z FEB 10  
FM AMEMBASSY GUATEMALA  
TO RUEHC/DEPT OF LABOR WASHINGTON DC  
RUEHC/SECSTATE WASHDC 0936  
INFO RUEHGT/AMEMBASSY GUATEMALA

UNCLAS GUATEMALA 000232

SIPDIS

E.O. 12958: N/A  
TAGS: [ELAB](#) [EIND](#) [ETRD](#) [KTIP](#) [PHUM](#) [SOCI](#) [GT](#)  
SUBJECT: Guatemala Child Labor Report for TVPRA and TDA

REF: A) 09 STATE 131995; B) 08 GUATEMALA 000693  
C) 09 GUATEMALA 000068; D) 08 GUATEMALA 000067

¶1. (U) Below is a response to Ref A, Tasking 1 (Trafficking Victims Protection Reauthorization Act (TVPRA)) and Tasking 2 (Trade and Development Act (TDA)). Guatemalan children continue to be the victims of forced and exploitive labor practices in the production of goods and the provision of services. While the Government of Guatemala (GoG) has made good-faith efforts to combat child labor, institutions aimed at eradicating the problem remain under-funded and inter-ministerial coordination at a technical level is ineffective. Guatemala has made progress, however, with the adoption of a new anti-trafficking law, the establishment of a "Road Map to End the Worst Forms of Child Labor in Guatemala," and the re-activation of the National Commission for the Eradication of Child Labor, headed by Vice President Espada.

#### Trafficking Victims Protection Reauthorization Act (TVPRA)

¶2. (U) While various NGOs, labor organizations and others noted their suspicion that child labor is a problem in the production of goods not listed in the 2008 report (Ref B), they could not provide substantive evidence of such practices and speculated as to which additional goods are produced using child labor. As such, Embassy Guatemala will not add any goods to those already listed in Ref B.

¶3. (U) Post would like to reiterate its disagreement with the inclusion of corn as part of the TVPRA 2008 report on goods produced using child labor (Ref C). Corn harvesting by indigenous groups remains a religious rite of passage and is a millennia-old cultural tradition. [Inclusion of corn in the report reflects the imposition of U.S. societal norms on an ancient Mayan custom and opens the USG to charges of cultural insensitivity.]

#### Trade and Development Act (TDA)

¶4. (U) The following information updates 2008 information (Ref D) on the worst forms of child labor. Responses are keyed to Ref A.

#### 2A. Prevalence and Sectoral Distribution of Exploitive Child Labor

¶1. Children are engaged in exploitive labor in the following areas: domestic service, street vending, commercial sexual exploitation, and agro-industry.

¶2. In 2009 the GoG did not collect any new data on the character of child labor. The most recent data is from 2006 with the Survey on Living Conditions (ENCOVI). The Ministry of Labor provided

preliminary statistics on the frequency and type of child labor (See Paragraphs 2C1.7-10). Embassy Guatemala will provide the complete statistics when they are available.

## 2B. Laws and Regulations

¶1. Guatemala passed the Law Against Sexual Violence, Exploitation and Trafficking in Persons in Spring of 2009. The law includes a reform of the penal code that strengthens penalties for those found guilty of using hazardous child labor and requires jail time in addition to a fine.

¶2. Guatemala's child labor laws are generally considered adequate; however enforcement could greatly improve.

## 2C. Institutions and Mechanisms for Enforcement

### Section 1: Hazardous Child Labor

¶1. Responsibility for the enforcement of child labor laws lies with several different agencies. The Ministry of Labor (MOL) receives complaints through the Office of the Inspector General and

the Child Workers Protection Unit. In 2009, the MOL received 213 labor complaints involving minors. These cases are investigated by labor inspectors and adjudicated depending on the nature of the complaint. According to the Chief Inspector, the MOL handles wage or bonus complaints as regular labor complaints, and usually conclude with the employer having to dismiss the employee. Labor inspectors also investigate criminal complaints and then refer them to the Solicitor General's Office (PGN) for prosecution. If there is a human rights component to the case it is referred to the Human Rights Ombudsman (PDH). No matter the type of case, the Child Workers Protection Unit, within the MOL, handles any social components of the case.

¶2. The primary coordinating mechanism for child labor issues is the National Commission for the Eradication of Child Labor, headed by the Vice President. The GoG reactivated the Commission in 2009. The Commission is comprised of the Ministers of Education, Public Health, and Agriculture, the Secretary of Social Well Being, the President's Secretary for Women's Issues, and representatives from the National Association of Municipalities, Social Security, the Coordinating Committee for Agricultural, Commercial, Industrial, and Financial Associations (CACIF), and the Federation of Unions. The Commission meets four times a year and the GoG participates at the Ministerial level. The MOL also operates nine Executive Secretaries throughout the country. The MOL administers these offices from the capital. The Executive Secretaries function on an ad hoc basis and provide space for local NGOs, municipal authorities, and others, to coordinate on issues of child labor at a local level.

While the reactivation of the Commission is a positive development, its performance has received mixed reviews. According to civil society contacts, the Commission provides a platform for high level participants to make pronouncements condemning child labor and does build ministerial consensus on key issues. However, at the technical level, the Commission struggles to execute plans or effectively coordinate. The Executive Secretaries give the MOL a presence on child labor in the field. However, according to civil society contacts, there is no system or medium term planning for their efforts, thereby reducing their value.

¶3. The Office of the Inspector General in the MOL receives complaints regarding hazardous child labor by telephone, in

writing, in person at the MOL in Guatemala City, or online through the MOL's website. The MOL also receives complaints at their 24 regional offices. In 2009, the MOL received 213 labor complaints involving minors.

¶4. In 2009, the Office of the Inspector General had a nationwide operating budget of approximately \$1.4 million. There is not a specific unit or budget for child labor within the Inspectorate. There are 8 inspectors trained in issues relevant to child labor. While these inspectors work on child labor cases, they also work on standard labor cases.

¶5. The eight inspectors who investigate child labor cases are inadequate as there are approximately one million child laborers in Guatemala according to ENCOVI. Further, the inspectors reside in Guatemala City, while the majority of child labor occurs in rural areas. This, alongside the MOL's lack of resources for investigations, prohibits investigators from executing proactive investigations into child labor.

¶6. According to the Office of the Inspector General, in 2009, it received 213 labor complaints involving minors. Of these, 62 were resolved and 1 was annulled. The MOL also executed seven surprise inspections of fireworks factories with the National Civil Police (PNC) and other government agencies during November and December 2009. Inspectors identified six cases of child labor to be adjudicated by the MOL through these raids.

¶7. According to the Labor Inspector General all concluded cases (62) resulted in the minor employee's termination with payment of any outstanding earnings and entitlements. At their conclusion, the Labor Inspector refers all cases to the MOL Unit for the

Protection of Child and Adolescent Workers where they handle any social issues.

¶8. According to MOL statistics, 213 cases involving underage workers were opened in 2009.

¶9. According to MOL statistics, 63 cases involving underage workers were resolved in 2009.

¶10. According to MOL statistics, 31 cases resulted in "convictions," as adjudicated by the MOL.

¶11. The MOL did not have any data regarding the length of time necessary to resolve child labor cases. However, the Labor Inspector General claimed that his office attends to all cases immediately.

¶12. One common complaint within civil society is that when the Labor Inspector General handles a child labor case, it only adjudicates the labor portion (usually unpaid wages or bonuses) and informs the employer that the employee is too young and must not work, rather than pursuing a legal case against the employer.

¶13. A problem throughout the GoG is a lack of resources to implement existing laws. While Guatemala has signed the

appropriate conventions and established child labor laws, the GoG has not appropriated funds to enforce these laws. Further, the GoG seems to lack the political will to enforce these laws or establish an implementing framework.

¶14. The GoG did not provide any training for investigators or others on the enforcement of child labor laws.

## Section 2: Forced Child Labor

While the GoG recognizes the legal differences between Forced Child Labor and Hazardous Child Labor, the two problems share an institutional infrastructure. As such, most answers in this section refer to the previous section.

¶1. See answer 2C1.1.

¶2. See answer 2C1.2.

¶3. See answer 2C1.3. According to the Inspector General, in 2009, the MOL did not receive any complaints of forced child labor.

¶4. See answer 2C1.4.

¶5. See answer 2C1.5.

¶6. As the MOL did not receive any complaints of forced child labor, they did not carry out any investigations.

¶7. None

¶8. None

¶9. None

¶10. None

¶11. None

¶12. N/A

¶13. While the MOL did not receive any complaints of forced child labor in 2009, and therefore, did not undertake any investigations, according to civil society sources, forced child labor remains a serious problem in Guatemala. To counter the problem, the Office of the Inspector General should take a more active role in seeking out such cases and conducting effective investigations. However, limitations, such as the Inspector General's inadequate budget and the centralized location of trained child labor inspectors, means that investigations in this area are insufficient.

¶14. See answer 2C1.14.

## 2D. Institutional Mechanisms for Effective Enforcement

### Section 1 - Child Trafficking

¶1. Guatemala has several government entities dedicated to the enforcement of child trafficking law. The Secretariat for Child Trafficking within the Vice President's office is the primary inter-ministerial coordinating mechanism and has the lead on child trafficking issues within the GoG. In the Public Ministry, there is a dedicated unit, comprised of two prosecutors, that handles cases of child trafficking and irregular adoptions. Additionally, the Ministry of Foreign Affairs has two people that work on trafficking issues providing training and doing public outreach. The National Civil Police (PNC) also has a group of five dedicated personnel to work trafficking issues.

Though the GoG has established new laws and institutions, child trafficking remains a major problem. Given the size of the problem, the number of investigators and/or dedicated personnel for the issue remains inadequate.

¶2. The Law Against Sexual Violence, Exploitation and Trafficking in Persons, established a Secretariat for Child Trafficking, and stipulated that it should have an operating budget of \$650,000. However, in 2009 the Secretariat only received \$25,000, rather than the amount stipulated by law. The Unit within the Public Ministry does not have its own budget and is under the direction of the Organized Crime section.

Members of government and local NGOs that work on child trafficking issues uniformly lament that the funding appropriated by the GoG is inadequate to handle the problem of trafficking in Guatemala.

¶3. The GoG maintains various hotlines to report instances of Child Trafficking. The following agencies maintain a hotline of some sort: the Public Ministry's unit for Child Trafficking and Irregular Adoptions, the PNC's unit for child trafficking, and the PGN's Office for the Defense of the Child.

¶4. The MP's Trafficking in Persons Unit has not returned Post's requests for statistics specific to child trafficking, nor a breakdown on the number of child rescues, arrests, prosecutions, cases closed, sentencing or the time for resolution. Post will provide these numbers once they are available.

In 2009, the MP received and investigated 400 trafficking cases, a significant rise over 2008 when they investigated 136. Investigating more cases would test the capacity limits of the Unit. However, if the MP expanded the unit, more proactive investigations would be possible.

¶5. Data unavailable.

¶6. Data unavailable.

¶7. Data unavailable.

¶8. The Unit achieved seven trafficking convictions in 2009.

¶9. Data unavailable.

¶10. Data unavailable.

¶11. Data Unavailable.

¶12. In 2009, the government did not provide any training for investigators or others responsible for the enforcement of child trafficking.

¶13. Guatemala did not experience armed conflict during the reporting period.

## Section 2 - Commercial Sexual

### Exploitation of Children

While the GoG recognizes the legal differences between Trafficking in Children, the Commercial Sexual Exploitation of Children and Children Involved in Illicit Activities, the three issues share the same institutional infrastructure. As such, most answers in this section refers to Section 1 - Trafficking in Children. Additionally, Post will provide the missing data when it becomes available.

¶1. See answer 2D1.1.

¶2. See answer 2D1.2.

¶3. See answer 2D1.3.

¶4. See answer 2D1.4.

¶5. Data unavailable.

¶6. Data unavailable.

¶7. Data unavailable.

¶8. See answer 2D1.8.

¶9. Data unavailable.

¶10. Data unavailable.

¶11. Data unavailable.

¶12. See answer 2D1.12.

¶13. See answer 2D1.13.

### Section 3 - Children Involved in Illicit Activities

While the GoG recognizes the legal differences between Trafficking in Children, the Commercial Sexual Exploitation of Children and Children Involved in Illicit Activities, the three issues share the same institutional infrastructure. As such, most answers in this section refer to Section 1 - Trafficking in Children. Additionally, Post will provide the missing data when it becomes available.

¶1. See answer 2D1.1.

¶2. See answer 2D1.2.

¶3. See answer 2D1.3.

¶4. See answer 2D1.4.

¶5. Data unavailable.

¶6. Data unavailable.

¶7. Data unavailable.

¶8. See answer 2D1.8.

¶9. Data unavailable.

¶10. Data unavailable.

¶11. Data unavailable.

¶12. See answer 2D1.12.

¶13. See answer 2D1.13.

## 2E. Government Policies on Child Labor

¶1. In 2009, the GoG enacted two policies aimed at eliminating or reducing child labor and trafficking. In collaboration with the GoG, the International Labor Organization (ILO) published, "The Road Map to Make Guatemala a Country Free of the Worst Forms of Child Labor." The GoG adopted the plan in 2009 and will establish an action plan in 2010. The Road Map's primary goal is to eradicate most child labor in Guatemala by 2020.

Adopted in April of 2009, the Law Against Sexual Violence, Illegal Adoption and Human Trafficking in revised Article 156 of the penal code and established stricter sentences for those convicted of employing minors in hazardous jobs. The revision requires a sentence of 2-4 years in prison and a fine of \$3,000 to \$12,000.

¶2. The GoG did not incorporate exploitative child labor as a specific issue in poverty reduction, development, educational or other social policies.

¶3. N/A

¶4. By law, the Secretary Against Sexual Violence, Exploitation, and Trafficking in Persons, should have an annual budget of \$650,000. However, according to the Secretary, the office received only \$25,000.

The ILO funded the creation of the "Road Map." Going forward, the ILO reports that many of the document's goals can be achieved with improved implementation and coordination (rather than additional funds). However, the ILO and the MOL acknowledged that a lack of funds for implementation could prove an impediment to the document's success. Several within civil society complained that the GoG effectively promulgates plans, but fails to enact them for a lack of funding and political will.

¶5. With regard to the "Road Map," in 2010, the GoG and ILO will convert it into an action plan and begin implementation. However, when asked regarding funding, contacts within the MOL and civil society expressed reservations that funds for implementation would be provided.

Likewise, the GoG established the Secretary Against Sexual Violence, Exploitation and Trafficking, as required by the new anti-trafficking law. This Office, which reports directly to the Vice President, struggled in 2009 as it did not receive the budget required by law (see 2E.4) and the appointed Secretary, resigned after just six months in the position.

¶6. See answer 2C1.2

¶7. The GoG did not sign any bilateral, regional or international agreements to combat trafficking in 2009.



## 2F. Social Programs to Eliminate or Prevent Child

### Labor

¶1. At present, the GoG does not have a plan that specifically addresses exploitative child labor.

¶2. The MOL runs a small program that provides work alternatives to girls in the Department of Totonicapán. The program provides technical training in sewing and other trades to girls, on the

condition that they stay in school. The program is funded by the GoG and the ILO and worked with approximately 50 girls in 2009. Another achievement of the GoG has been the elimination of any fees required to attend public school. Finally, while the GoG's conditional cash transfer program, My Family Progresses (MFP), does not explicitly address child labor, the program aims to improve school attendance, an indicator with a direct correlation to child labor. MFP recognizes this fact and has reached out to members of civil society who work on issues of child labor, and discussed incorporating the issue explicitly.

¶3. N/A

¶4. N/A

¶5. N/A

¶6. The GoG did not sign any bilateral, regional or international agreements to combat trafficking in 2009.

## 2G. Continual Progress

¶1. In 2009 the GoG made mixed progress on the issue of child labor. The April 2009 passage of the Law Against Sexual Violence, Trafficking and Irregular Adoptions marked a significant achievement and the "Road Map" provides an excellent starting point to comprehensively address the issue. However, as several members of civil society stated, for good legislation to function as designed, it requires effective enforcement.

The inter-ministerial effort led by the MOL to investigate alleged child labor at fireworks factories was a good step and similar efforts should continue throughout 2010 and extend into other sectors where child labor allegedly occurs. To improve the effectiveness of these efforts, the MOL should work to include non-governmental partners with a knowledge of the issue. In this instance, the investigation found that most child labor with fireworks occurs in private residences, rather than at the factories, an already well-known fact within NGOs.

Despite this progress, the GoG continues to underfund key institutions in the fight against child labor. The insufficient budget for labor inspections ensures that the MOL will have limited means to pursue relevant cases. Likewise, the lack of technical level coordination by the Committee to Eradicate Child Labor in Guatemala reduces effective implementation of the law or other government-led plans.

MCFARLAND